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UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRADLEY KEITH SLEIGHTER,

Plaintiff,

Case No. 1:12-cv-1008

Honorable Judge:
GORDON J. QUIST

v

KENT COUNTY CORRECTIONAL FACILITY
ADMINISTRATION, Defendants,

(PROPOSED DEFENDANTS:
UNDER SHERIFF HESS and
CAPTAIN RANDY DEMORY)

(PROPOSED) SECOND AMENDED COMPLAINT

INTRODUCTION TO PROCEDURAL HISTORY

Plaintiff's original complaint (Docket #1) was filed solely upon the information provided for the Plaintiff's particular set of circumstances. The complaint was filed from the confines of the Kent County Correctional Facility (KCCF) and with no access to legal material to advance and sustain a complaint under 42 USC § 1983.

At the time he had no real understanding of exactly how broad in scope the Defendant's violation of his civil rights reached and was only able to present a perfunctory claim and an undeveloped legal theory to sustain those claims; yet, his complaint survived the initial review

and it was served upon the Defendants, Kent County Jail Administration and Corizion Medical Services (Doc. #11 and #8 respectively).

In the Defendant's answer to complaint (Doc. #13), the Plaintiff suspected that he may not have written his complaint correctly to express the exact claims he was alleging, because the Defendants were making affirmative defenses to claims he had not made; while making no responses to his actual claims, affirmative or otherwise.

Upon this realization that the Defendant's affirmative defenses were going to be based on the legal theory that the Plaintiff was alleging lack of medical treatment, they were not liable, because they have a contracted medical provider, Corizon Health Inc., and they are responsible for any treatment he received and/or had not received; the Plaintiff filed a Motion to Dismiss Corizon, as a Defendant (Doc. #16). Motion to Dismiss was granted 04/04/2013, Docket Number 23. Plaintiff had hoped that the dismissal of Corizon, would clarify the issues at bar.

Plaintiff prepared a First Amended Complaint in support of his motion, and a Motion to Certify Class (Doc. #18). Both the motions were denied on 5/22/2013 (Doc. #29). He then erroneously filed notice to appeal on 5/30/2013 (Doc. #30).

In the Defendants objections to these motions they pointed out their objections, one of which was that Plaintiff failed to file a motion for leave to amend. Therefore, he filed a motion to amend his first amended complaint and failed; on a number of merits.

In their objections, Plaintiff was aware they had continued advancing their defense strategy base on claims that were not alleged. Their strategy appeared to be based on what his claims implied, without actually addressing the claims *per se.*

He was then incarcerated, 6//3/2013, at KCCF, and unable to address this case any further; due to KCCF's failure to maintain an adequate law library (this resulted in a § 1983 complaint [case no. 1:13-cv-0697]). He filed a motion to supplement his complaint, 7/29/2013 (Doc. #41), based on the Defendant's policy not allowing another different pain medication.

Plaintiff, with leave of Court, incorporates this new claim into a Second Amended Complaint. This would serve a dual purpose; first, it would be in the interest of judicial economy and moot his Motion for Leave of Court to Supplement Complaint (Doc. #41); it also allows the Plaintiff to show that the Defendant's policy has caused an additional violation of his rights.

STATEMENT OF FACTS

Plaintiff received treatment, as a patient, for a chronic osteo-neurological pain condition, from Ricardo Garza MD, from February 13th, 2007 through January 16th, 2012, before being incarcerated in Kent County Correctional Facility (KCCF).

Dr. Ricardo Garza is a licensed medical doctor (MD), in good standing within the local medical community, the State of Michigan, and is licensed by the DEA to prescribe controlled substances; including, methadone.

Plaintiff received a legal prescription for methadone on January 16th, 2012 and was incarcerated in the KCCF later that day with prescription in hand (See Exhibit #1, Doc. #1).

Methadone is approved by the US Food and Drug Administration for the treatment of moderate to severe pain. Methadone is also approved for use in "Methadone Maintenance Programs" (MMP), to treat opioid addiction. Plaintiff, Bradley Keith Sleighter, was incarcerated in the Kent County Correctional Facility (KCCF) from January 16th, 2012 through November 15th, 2012.

Plaintiff was denied his medication, without seeing a medical doctor to order the discontinuation of the medication Dr. Garza had just prescribed the same day he was lodged, January 16th, 2012, at KCCF.

He was informed that KCCF's policy prohibits the use of opioid medications, and said policy was created and implemented by the jail administration.

Due to being denied his medication he experienced a classical withdrawal syndrome which methadone produces upon abrupt discontinuation, and is fully described in Plaintiff's Opposition to Summary Judgment in Favor of the Defendants, Plaintiff's Exhibit #3.

Plaintiff was released from KCCF, 9/15/2012, and saw Dr. Belen Amat-Martinez, who prescribed him, the pain medication, Ultram. He took the medication as directed until his incarceration, 6/3/2013.

At that time he informed the intake medical staff what pharmacy he had his prescriptions filled at. Within two days, he received two, of the three, medications he took on a daily basis. He received the blood pressure medication he regularly took and a medication for a diagnosed sleep disorder, Nuvigil (a controlled substance). He did not receive the Ultram (a non-controlled substance) for his pain. He was informed that the jail policy prohibited its use. This action led to the Plaintiff filling a Motion to Supplement Complaint (Doc. #41).

CONCISE SUMMARY OF COMPLAINT

Plaintiff's complaint is clear, concise and simple, even though it is not as developed as his "Second Amended Complaint"; the Defendants will have no doubts left as to his claim and his legal standing to advance, maintain, and seek appropriate relief in his § 1983 litigation. They

will have no excuse to continue in their legal gamesmanship. The Second Amendment Complaint is clear, concise and brings to bar, a simple, yet powerful legal theory.

For the Defendants benefit, the Plaintiff will enumerate the essential elements, but not limit them to, the complaint as follows:

1). Plaintiff had a valid legal prescription for methadone.

2). He went to jail and was denied his medication, methadone.

3). He suffered a painful withdrawal, as a result of not receiving his prescription for methadone.

4). Defendant's policy prohibited him from receiving his medication, methadone.

Thus stating a claim upon which relief is plausible. He has meet the requirements to maintain his § 1983 litigation and relies on his legal standing set forth henceforth in this brief, to maintain this § 1983 litigation.

PLAINTIFF'S CLAIM WITH LEGAL STANDING

Plaintiff claims that the Defendant's medical provider does not provide an approved medical protocol and that: **The Drug Addiction Treatment Act of 2000 (DATA 2000)**, Title XXXV, Section 3502 of the Children's Health Act of 2000, which permits physicians who meet certain qualifications to treat opioid addiction with Schedule III, IV, and V narcotic medications that have been specifically approved by the Food and Drug Administration for that indication.

Since there is only one narcotic medication approved by the FDA for the treatment of opioid addiction within the Schedules given, DATA 2000 basically refers to the use of buprenorphine [Subutex and Suboxone] for the treatment of opioid addiction. Methadone is a

Schedule II narcotic approved for the same purpose within the highly regulated methadone clinic setting.

Plaintiff also relies on the fact that this entire litigation revolves around the Defendant's policy that denied him access to the manufacture's detailed "withdrawal protocol" for the discontinuation of methadone for pain; not the Kent County Jail's "withdrawal protocol", in which he has another liberty interest at bar for his claim.

> "**Discontinuation of Methadone for Pain.** When a patient no longer requires therapy with methadone for pain, use a gradual downward titration, of the dose every two to four days, to prevent signs and symptoms of withdrawal in the physically-dependent patient. **Do not abruptly discontinue methadone."**

Plaintiff claims that the Defendant's policy prohibiting methadone in the jail also prohibits "buprenorphine" (Subutex and Suboxone), the only FDA approved medication for opioid addiction outside a methadone clinic.

Plaintiff has a legal right, protected by federal interests, to continue receiving his medication, as his personal physician sees fit. He claims that as a pretrial detainee, innocent in the eyes of the law, retains all the rights and liberties that his bailed counterpart enjoys, except those necessarily lost through the fact of confinement[i] [1]

Given this permissible deprivation of liberty, due process and its concept of fundamental fairness dictate that a pretrial detainee should not be subjected to additional punishment or loss, unless such further deprivation receives justification from a valid interest of the state. Included in

[1] Cudnik v. Kreiger, 395 F. Supp. 305, at 311 (quotation marks omitted).

the ban of punishment without due process is forced and involuntary rehabilitation which in this instance the defendant jail officials seek to impose on the plaintiff.[2] As aptly stated in Hamilton v. Love, *supra*, 328 F.Supp. at 1193: "If the conditions of pre-trial detention derive from punishment rationales, such as retribution, deterrence, or even involuntary rehabilitation, then those conditions are suspect constitutionally and must fall unless also clearly justified by the limited . . . purpose and objective of pre-trial detention . . .." [ii 3]

Recent cases have held that pretrial confinement must be consistent with the least restrictive means available to achieve this valid governmental objective.[iii 4]

In Hamilton v. Love, *supra*, 328 F.Supp. at 1192, the court held: "It is manifestly obvious that the conditions of incarceration for detainees must, cumulatively, add up to the least restrictive means of achieving the purpose requiring and justifying the deprivation of liberty." [iv 5]

The state's sole interest in detaining an individual prior to trial is to assure that person's appearance at trial. A corollary to this is the state's interest in the security and internal order of its jails.[v] If the jail policy, here involved, furthers neither of the above interests and plaintiffs are shown to suffer a deprivation of liberty enjoyed by methadone addicts able to post bail, they are entitled to relief. [6]

Plaintiff's complaint (Doc. #1) clearly raises a liberty interest. He relies on the Courts clear and concise definitions given in their **6th Circuit Court of Appeals** opinion of Cudnik v. Kreiger; which if read replacing the Plaintiff's and the Defendant's name in that decision, with Sleighter v. Kent County et al., one would be lead to think it was the same § 1983 litigation.

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[2] *Id*
[3] *Id.*
[4] *Id*
[5] *Id*
[6] *Id at 312*

Plaintiff is not going to try this case in pretrial filings because he cannot possibly introduce the 1000 U.S. Government documents in support of his position, nor will he be able to present the unlimited Federal Case Law supporting his position, at this time.

The jail policy of denying methadone to pretrial detainees, who were receiving treatment at a methadone program prior to incarceration, is in essence a state sanctioned measure of involuntary rehabilitation. It is fostered by governmental officials and constitutes state action under section 1983. The policy does not effectuate the state's narrow interests in pretrial confinement and causes a deprivation that is not suffered by bailed methadone addicts. The policy thus constitutes punishment imposed without a finding of criminal culpability and, as such, is violative of fundamental due process rights. [7].

The Plaintiff, *pro se, sui juris,* is calling attention to the Defendant's ongoing disregard for Federal Law and the rights of its inmate population, and the violations he suffer at their hands. One of the issues at bar, is whether the Plaintiff will be able to realize his pursuit of justice and set a legal precedence in both Pain Management and Medication Assisted Addiction Treatment in the KCCF. Plaintiff claims that the Kent County Correctional Facility Administration can show no compelling governmental interest(s) in their practices and their "policy" is not the least restrictive means to accomplish these illusive interests. Plaintiff raises a violation of his liberty interests.

Plaintiff claims that the "policy" in question holds no statutory authority and is not a promulgated policy, nor has it ever been promulgated by any governmental entity entitled to do

[7] Id at 313

so. Neither have the Defendants ever received any guidance from any qualified addiction specialists in their construction and implementation of the policy in question.

Plaintiff claims that KCCF allows pregnant women on "Methadone Maintenance Programs", prior to their incarceration, to receive Methadone during their stay in jail. This practice is neither viewed to be a threat to the security and/or the well order of the institution, nor is it seen as a "hindrance" or "obstacle" that would restrict any means to further, secure or insure any compelling governmental interests.

As a result of allowing pregnant women Methadone the Plaintiff brings to bar an "*equal protection*" liberty interest.

PLAINTIFF'S STATEMENT OF PURPOSE IN THIS § 1983 LITIGATION

Contrary to Defendants belief and argument Plaintiff is not alleging dissatisfaction with medical treatment while incarcerated, but rather is claiming that the Defendant's policy which prohibits methadone to be used in the jail brings to bar another liberty interest as a pretrial detainee.

Plaintiff has brought a complaint against the Defendants, Kent County, et al., under the provisions allowed by 42 U.S.C. § 1983, in that his civil rights were violated by a policy implemented by the Kent County Jail Administration.

Plaintiff relies on the legal principle that a policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims whether arising in a federal or state institution; in this case, a municipal county jail. When a prisoner regulation or practice, in this case a non-promulgated policy, offends a fundamental constitutional guarantee, Plaintiff prays

that the federal courts will discharge their duty to protect his constitutional rights, and when they are violated, administer appropriate relief when justice so requires for the Plaintiff.

The Plaintiff, intents to pursue justice in the name of liberty, by right as a US Citizen; and as the US Constitution allows.

He will show, by inference, before trial, that they have no legal standing to defeat Plaintiff's complaint and are attempting victory relying on legal gamesmanship and experience.

Plaintiff will show that his claims are meritorious and founded in sound legal principles; as well as constitutionally backed principles

CLAIM FOR RELIEF

Relief is appropriate under the provisions outlined in 42 USC § 1983 and can be realized by the Plaintiff.

Plaintiff seeks punitive relief against the Defendants for violating his civil rights which resulted in pain and suffering; as well as depriving him of his liberty interests.

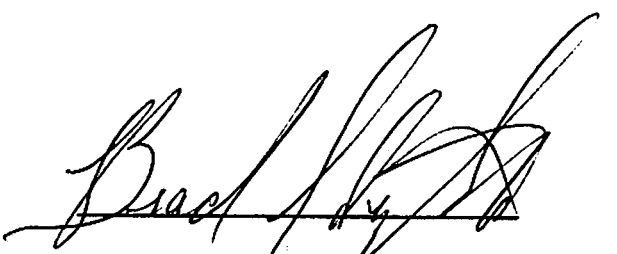
Punitive relief is appropriate against the Defendants for their implementation of a policy dictating an action and/or lack of action, thus inflicting pain, suffering and injury upon the Plaintiff, from January 16th, 2012 to November 15th, 2012.

Compensatory relief is appropriate for the Plaintiff's "appropriate relief", allowed by Congress.

The Plaintiff, can realize declaratory relief, and will present a legal position to support this claim for relief.

Plaintiff is entitled to such other relief as Justice so allows and requires.

Date Submitted: August 28, 2013



Bradley Keith Sleighter

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[i] Inmates of Milwaukee County Jail v. Petersen, 353 F.Supp. 1157, 1160 (E.D.Wisc.1973); Collins v. Schoonfield, *supra*, 344 F.Supp. at 265. *Cf.* Coffin v. Reichard, 143 F.2d 443, 445 (6th Cir. 1944).

[ii] *See also* Rhem v. Malcolm, *supra*, 371 F. Supp. at 622, 623; Inmates of Suffolk County Jail v. Eisenstadt, *supra*, 360 F. Supp. at 686; Conklin v. Hancock, 334 F.Supp. 1119, 1121 (D.N.H.1971); Seale v. Manson, 326 F.Supp. 1375, 1379 (D. Conn.1971).

[iii] Brenneman v. Madigan, *supra*, 343 F.Supp. at 138, citing Shelton v. Tucker, 364 U.S. 479, 488, 81 S.Ct. 247, 5 L.Ed. 2d 231 (1960)

[iv] *See also* Rhem v. Malcolm, *supra*, 371 F. Supp. at 622; Inmates of Suffolk County Jail v. Eisenstadt, *supra*, 360 F.Supp. at 686; Smith v. Sampson, 349 F.Supp. 268, 271 (D.N.H.1972); Collins v. Schoonfield, *supra*, 344 F.Supp. at 265.

[v] Rhem v. Malcolm, *supra*, 371 F.Supp. at 623; Inmates of Suffolk County Jail v. Eisenstadt, *supra*, 360 F.Supp. at 685, 686; Smith v. Sampson, *supra*, 349 F.Supp. at 271, 272; Brenneman v. Madigan, *supra*, 343 F.Supp. at 137; Hamilton v. Love, *supra*, 328 F.Supp. at 1191

CERTIFICATE OF SERVICE

I, the Plaintiff, certify that I have delivered to the Defendant's Attorney of record, Varnumn LLP, a true and correct copy of this Proposed **Second Amended Complaint**, by electronic means through the internet to the email address of record, pigreenwald@varnumlaw.com and also to the U.S. District Court for the Western District of Michigan on this 30th, day of August, 2013

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